

## **CHAPTER 1**

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## **CHAPTER 1**

### **INTRODUCTION TO FISCAL LAW**

#### **I. INTRODUCTION.**

##### **A. The Appropriations Process.**

1. U.S. Constitution, Art. I, § 8, grants to Congress the power to “. . . lay and collect Taxes, Duties, Imports, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States . . . .”
2. U.S. Constitution, Art. I, § 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of an Appropriation made by Law.”

##### **B. Historical Perspective.**

1. For many years after the adoption of the Constitution, executive departments exerted little fiscal control over the monies appropriated to them. During these years, departments commonly:
  - a. Obligated funds in advance of appropriations;
  - b. Commingled funds and used funds for purposes other than those for which they were appropriated; and
  - c. Obligated or expended funds early in the fiscal year and then sought deficiency appropriations to continue operations.
2. Congress passed the Antideficiency Act (ADA) to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Act consists of several statutes that mandate administrative and criminal sanctions for the unlawful use of appropriated funds. See 31 U.S.C. §§ 1341, 1342, 1350, 1351, and 1511-1519.

## II. KEY TERMINOLOGY.

- A. Fiscal Year. The Federal Government's fiscal year begins on 1 October and ends on 30 September.
- B. Period of Availability. Most appropriations are available for obligation for a limited period of time, *e.g.*, one fiscal year for operation and maintenance appropriations. If activities do not obligate the funds during the period of availability, the funds expire and are generally unavailable for obligation thereafter.
- C. Obligation. An obligation is any act that legally binds the government to make payment. Obligations represent the amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period. DOD Financial Management Regulation 7000.14, Vol. 1, p. xxi [hereinafter DoD FMR].
- D. Budget Authority.
  - 1. Congress finances federal programs and activities by granting budget authority. Budget authority is also called obligational authority.
  - 2. Budget authority means “. . . authority provided by law to enter into obligations which will result in immediate or future outlay involving Government funds . . . .” 2 U.S.C. § 622(2).
    - a. Examples of “budget authority” include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. OMB Cir. A-34, Instructions on Budget Execution (Nov. 2000), § 11.2 [hereinafter OMB Cir. A-34], available at <http://www.whitehouse.gov/omb/circulars/a034/toc00.htm>.
    - b. “Contract Authority,” as noted above, is a limited form of “budget authority.” Contract authority permits agencies to obligate funds in advance of appropriations but not to pay or disburse those funds absent some additional appropriations authority. See, e.g., 41 U.S.C. § 11 (Feed and Forage Act).

3. Agencies do not receive cash from appropriated funds to pay for services or supplies. Instead they receive the authority to obligate a specified amount.
- E. Authorization Act. DFAS-IN Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000), ch. 3, para. 0304 [hereinafter DFAS-IN 37-1], available at <http://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/index.htm>.
1. An authorization act is a statute, passed annually by Congress, that authorizes the appropriation of funds for programs and activities.
  2. An authorization act does not provide budget authority. That authority stems from the appropriations act.
  3. Authorization acts frequently contain restrictions or limitations on the obligation of appropriated funds.
- F. Appropriations Act.
1. An appropriations act is the most common form of budget authority.
  2. An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” The Army receives the bulk of its funds from two annual appropriations acts: (1) the Department of Defense Appropriations Act; and (2) the Military Construction Appropriations Act. DFAS-IN Reg. 37-1, ch. 3, para. 030701.
  3. The making of an appropriation must be stated expressly. An appropriation may not be inferred or made by implication. Principles of Fed. Appropriations Law, Vol. I, p. 2-13, GAO/OGC 91-5 (1991).
- G. Comptroller General and General Accounting Office (GAO).
1. The Comptroller General of the United States heads the GAO, an investigative arm of Congress charged with examining all matters relating to the receipt and disbursement of public funds.

2. Established by the Budget and Accounting Act of 1921 (31 U.S.C. § 702) to audit government agencies.
3. Issues opinions and reports to federal agencies concerning the obligation and expenditure of appropriated funds.

### III. ADMINISTRATIVE CONTROL OF APPROPRIATIONS.

#### A. Methods of Subdividing Funds.

1. Formal subdivisions: Appropriations are subdivided by the executive branch departments and agencies.
  - a. These formal limits are referred to as apportionments, allocations, and allotments.
  - b. Exceeding a formal subdivision of funds violates the ADA. 31 U.S.C. § 1517(a)(2). See DFAS-IN Reg. 37-1, ch. 3, para. 031403.
2. Informal subdivisions: Agencies may subdivide funds at lower levels, *e.g.*, within an installation, without creating an absolute limitation on obligational authority. These subdivisions are considered funding targets. These limits are **not** formal subdivisions of funds.
  - a. Targets are referred to as “allowances.”
  - b. Incurring obligations in excess of an allowance is not necessarily an ADA violation. If a formal subdivision is breached, however, an ADA violation may occur, and the person responsible for exceeding the target may be held liable for the violation. DFAS-IN Reg. 37-1, ch. 3, para. 031402. For this reason, Army policy requires reporting such overobligations. DFAS-IN Reg. 37-1, ch. 4, para. 040204.L.

B. Accounting Classifications. See DFAS-IN Reg. 37-1, ch. 5, para. 050102.

1. Accounting classifications are codes used to manage appropriations. They are used to implement the administrative fund control system and to help ensure funds are used correctly.
2. An accounting classification is commonly referred to as a **fund cite**. DFAS-IN Reg. 37-100-XX, The Army Mgmt. Structure, provides a detailed breakdown of Army accounting classifications. The XX, in DFAS-IN Reg. 37-100-XX, stands for the last two digits of the fiscal year, *e.g.*, DFAS-IN Reg. 37-100-02 is the source for accounting classification data for FY 2002 for the Department of the Army. DFAS-IN 37-100-XX is published annually. Go to <http://dfas4dod.dfas.mil/centers/dfasin/library/regs.htm>.

C. Understanding an Accounting Classification.

1. The following is a sample fund cite:

	<b>21</b>	<b>2</b>	<b>2020</b>	<b>67</b>	<b>1234</b>	<b>P720000</b>	<b>2610</b>	<b>S18001</b>
<b>AGENCY</b>	└─	└─	└─	└─	└─	└─	└─	└─
<b>FISCAL YEAR</b>		└─	└─	└─	└─	└─	└─	└─
<b>TYPE OF APPROPRIATION</b>			└─	└─	└─	└─	└─	└─
<b>OPERATING AGENCY CODE</b>			└─	└─	└─	└─	└─	└─
<b>ALLOTMENT NUMBER</b>			└─	└─	└─	└─	└─	└─
<b>PROGRAM ELEMENT</b>			└─	└─	└─	└─	└─	└─
<b>ELEMENT OF EXPENSE</b>			└─	└─	└─	└─	└─	└─
<b>FISCAL STATION NUMBER</b>			└─	└─	└─	└─	└─	└─

- a. The first two digits represent the military department. The “**21**” in the example shown denotes the Department of the Army.
- b. Other Department codes are:
  - (1) 17 - Navy
  - (2) 57 - Air Force
  - (3) 97 - Department of Defense



- c. The third digit shows the Fiscal Year/Availability of the appropriation. The “2” in the example shown indicates Fiscal Year (FY) 2002 funds.
- (1) Annual appropriations are used frequently in installation contracting.
  - (2) Other fiscal year designators encountered in installation contracting, less frequently, include:
    - (a) Third Digit = X = No Year appropriation, which is available for obligation indefinitely.
    - (b) Third Digit = 8/2 = Multi-Year appropriation, in this example, funds appropriated in FY 1998 and available for obligation until FY 2002.
- d. The next four digits reveal the type of the appropriation. The following designators are used within DOD fund citations:

	<u>ARMY</u>	<u>NAVY/MC</u>	<u>AIR FORCE</u>	<u>OSD</u>
Military Personnel	2010	1453/1105	3500	N/A
Reserve Personnel	2070	1405/1108	3700	N/A
National Guard Personnel	2060	N/A	3850	N/A
O&M*	<b>2020</b>	1804/1106	3400	0100
O&M, Reserve	2080	1806/1107	3740	N/A
O&M, National Guard	2065	N/A	3840	N/A
Procurement (Aircraft)	2031	1506	3010	N/A
Procurement (Missiles)	2032	N/A	3020	N/A
Procurement (Weapons & Tracked Vehicles)	2033	1507	N/A	N/A
Procurement (Ammunition)	2034	1508	3011	N/A
Shipbuilding & Conversion	N/A	1611	N/A	N/A
Other Procurement	2035	1810/1109	3080	0300
Research, Development, Test & Evaluation (RDT&E)	2040	1319	3600	0400
Military Construction	2050	1205	3300	0500
Family Housing Constr.	0702	0703	7040	0706
Reserve Construction	2086	1235	3730	N/A
National Guard Constr.	2085	N/A	3830	N/A
Environmental Restoration	0810	0810	0810	0810
Wildlife Conservation	5095	5095	5095	N/A

\*Operation and Maintenance: This appropriation provides funding for the operation and maintenance of most Army activities and facilities to include training and the purchase of supplies and some equipment as well as some limited amount of construction.

#### IV. LIMITATIONS ON THE USE OF APPROPRIATED FUNDS.

##### A. General Limitations on Authority.

1. The authority of executive agencies to spend appropriated funds is limited.
2. An agency may obligate and expend appropriations only for a proper **purpose**.
3. An agency may obligate only within the **time** limits applicable to the appropriation (*e.g.*, O&M funds are available for obligation for one fiscal year).
4. An agency must obligate funds within the **amounts** appropriated by Congress and formally distributed to or by the agency.

##### B. Limitations -- Purpose.

1. The "Purpose Statute" requires agencies to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. See 31 U.S.C. § 1301; see also DFAS-IN Reg. 37-1, ch. 8, para. 0803.
2. Three-Part Test for a Proper Purpose. Secretary of Interior, B-120676, 34 Comp. Gen. 195 (1954).
  - a. Expenditure of appropriations must be for a specified purpose, or **necessary and incident** to the proper execution of the general purpose of the appropriation;
  - b. The expenditure must not be prohibited by law; and
  - c. The expenditure must not be otherwise provided for, *i.e.*, it must not fall within the scope of another appropriation.

3. Appropriations Acts. DOD has nearly one hundred separate appropriations available to it for different purposes.
  - a. Appropriations are differentiated by service (Army, Navy, etc.) and component (Active, Reserve, etc.), as well as purpose (Procurement, Research and Development, etc.). The major DOD appropriations provided in the annual appropriations act are:
    - (1) Operation & Maintenance -- used for the day-to-day expenses of training exercises, deployments, operating and maintaining installations, etc.;
    - (2) Personnel -- used for military pay and allowances, permanent change of station travel, etc.;
    - (3) Research, Development, Test and Evaluation (RDT&E) -- used for expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance and operation of facilities and equipment; and
    - (4) Procurement -- used for production and modification of aircraft, missiles, weapons, tracked vehicles, ammunition, shipbuilding and conversion, and “other procurement.”
  - b. DOD also receives smaller appropriations for other specific purposes (*e.g.*, Overseas Humanitarian, Disaster, and Civic Aid (OHDACA), Chemical Agents and Munitions Destruction, etc.).
  - c. Congress appropriates funds separately for military construction.
4. Authorization Acts.
  - a. Annual authorization acts generally precede DOD’s appropriations acts.

- b. The authorization act may clarify the intended purposes of a specific appropriation or contain restrictions on the use of the appropriated funds.


C. Limitations -- Time.

- 1. Appropriations are available for limited periods. An agency must incur a legal obligation to pay money within an appropriation's period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations.
  - a. Expired funds retain their "fiscal year identity" for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. Again, however, expired funds are not available for new obligations.
  - b. There are exceptions to this general prohibition against obligating funds for new work following the period of availability.
- 2. Appropriations are available only for the bona fide need of an appropriation's period of availability. 31 U.S.C. § 1502(a). See Magnavox -- Use of Contract Underrun Funds, B-207433, Sept. 16, 1983, 83-2 CPD ¶ 401; To the Secretary of the Army, B-115736, 33 Comp. Gen. 57 (1953).

D. Limitations -- Amount.

- 1. The Antideficiency Act, 31 U.S.C. §§ 1341-42, 1511-19, prohibits any government officer or employee from:
  - a. Making or authorizing an expenditure or obligation in excess of the amount available in an appropriation. 31 U.S.C. § 1341(a)(1)(A).

- b. Making or authorizing expenditures or incurring obligations in excess of formal subdivisions of funds; or in excess of amounts permitted by regulations prescribed under 31 U.S.C. § 1514(a). See 31 U.S.C. § 1517(a)(2).
  - c. Incurring an obligation in advance of an appropriation, unless authorized by law. 31 U.S.C. § 1341(a)(1)(B).
  - d. Accepting voluntary services, unless otherwise authorized by law. 31 U.S.C. § 1342.
- 2. Investigating violations. If an apparent violation is discovered, the agency must report and investigate. Violations could result in administrative and/or criminal sanctions. See DOD FMR, vol. 14 (March 2001); DFAS- IN Reg. 37-1, ch. 4, para. 040204; AFI 65-608, Antideficiency Act Violations (1 May 1998), ch. 3, para. 3.1, available at <http://afpubs.hq.af.mil/pubfiles/af/65/afi65-608/afi65-608.pdf>.
  - a. The commander must issue a flash report within 15 working days of discovery of the violation. Air Force commanders must submit flash reports within 10 working days.
  - b. The MACOM commander must appoint a “team of experts,” including members from the financial management and legal communities, to conduct a preliminary investigation.
  - c. If the preliminary report concludes a violation occurred, the MACOM commander will appoint an investigative team to determine the cause of the violation and the responsible parties. For the Army, investigations are conducted pursuant to AR 15-6, Procedure for Investigating Officers and Boards of Officers (30 Sep 1996).
  - d. The head of the agency (e.g., SECDEF, for the DOD) must report to the President and Congress whenever a violation of 31 U.S.C. §§ 1341(a), 1342, or 1517 is discovered. OMB Cir. A-34, para. 32.2; DOD Directive 7200.1, Administrative Control of Appropriations (4 May 1995), Encl. 5, para. R [hereinafter DODD 7200.1].

3. Individuals responsible for Antideficiency Act violations shall receive disciplinary action commensurate with the circumstances and the severity of the violation. DODD 7200.1, para. D.5. See 31 U.S.C. §§ 1349(a),  8.

## V. FISCAL LAW RESEARCH MATERIALS.

### A. Legislation.

1. Titles 10 and 31, United States Code.
2. Annual authorization and appropriations acts.

### B. Legislative History.

1. Legislative history is the record of congressional deliberations that precede the passage of a statute. It is not legislation. See Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).
2. The legislative history is not binding upon the Executive Branch. If Congress provides a lump sum appropriation without restricting what may be done with the funds, a clear inference is that it did not intend to impose legal restrictions. See SeaBeam Instruments, Inc., B-247853.2, July 20, 1992, 92-2 CPD ¶ 30; LTV Aerospace Corp., B-183851, Oct. 1, 1975, 75-2 CPD ¶ 203.

### C. Decisions.

1. The Comptroller General issues opinions concerning the propriety of appropriated fund obligations or expenditures, except for those described in paragraph 3, below. See 31 U.S.C. § 3529. Activities must request these opinions through finance officer channels in advance of an obligation or expenditure. See DOD FMR, vol. 5, ch. 1 para. 010403.B.2 (May 2001).

2. The fiscal law decisions of the Comptroller General appear in the Decisions of the Comptroller General of the United States, published by the Government Printing Office. Comptroller General opinions also are available at the General Accounting Office (GAO) website (<http://www.gao.gov>), through commercial legal research services (e.g., LEXIS, WESTLAW), and in the Comptroller General Procurement Decisions (CPD) reporter.
3. Agency Advance Decisions. See DOD FMR, vol. 5, ch. 1, para. 010403.B.2 and vol. 5, app. E (May 2001). Per the General Accounting Office Act of 1996 (Pub. L. 104-316, § 204, 110 Stat. 3826 (1996) (codified at 31 U.S.C. § 3529)) and, as delegated by the Director, Office of Management and Budget (OMB), the following issue advance decisions for designated categories:
  - a. DOD: uniformed service member pay, allowances, travel, transportation, and survivor benefits.
  - b. Office of Personnel Management (OPM): civilian pay and leave.
  - c. General Services Administration Board of Contract Appeals (GSBCA): civilian employee travel, transportation, and relocation.

D. Regulations.

1. DOD FMR 7000.14-R (15 Volumes). Go to <http://www.dtic.mil/comptroller/fmr>.
2. Army: DFAS-IN 37-1, Finance and Accounting Policy Implementation. Go to <http://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/ar37-1/index.htm>.
3. Navy: Navy Comptroller Manual.



4. Air Force: Interim Guidance on Procedures for Administrative Control of Appropriations and Funds Made Available to the Department of the Air Force (formerly DFAS-DE 7200.1-R and AFR 177-16); AFI 65-608, Antideficiency Act Violations (1 May 1998); Interim Guidance on Accounting for Obligations (formerly DFAS-DE 7000.4-R and AFR 170-8); Interim Guidance on Accounting for Commitments (formerly DFAS-DE 7000.5-R and AFR 170-13); DFAS-DE 7010.1-R General Accounting and Finance Systems at Base Level (15 Feb. 1991); DFAS-DE 7010.2-R Commercial Transactions at Base Level (31 Jan. 1996); DFAS - DE 7010.3-R, Travel Transactions at Base Level. Go to <http://dfas4dod.dfas.mil/library/publication/dfasdepubs.htm> and for AFI 65-608 go to <http://afpubs.hq.af.mil/pubfiles/af/65/afi65-608/afi65-608.pdf>.

E. Treatises.

1. General Accounting Office, Principles of Federal Appropriations Law, 2d ed., GAO/OGC 91-5 (July 1991) (commonly referred to as the “Red Book”), available at [www.gao.gov/specialpubs](http://www.gao.gov/specialpubs).
2. General Accounting Office, Accounting Guide, GAO/AFMD--PPM-2.1 (September 1990); Policies and Procedures Manual For Guidance of Federal Agencies, Title 7 (February 1990).
3. General Accounting Office, A Glossary of Terms Used in the Budget Process, GAO/AFMD-2.1.1 (July 1993).

F. Internet Services.

1. Defense Finance and Accounting Service. <http://dfas4dod.dfas.mil>.
2. Other Government Agency Home Pages, *e.g.*, <http://www.asafm.army.mil/>.

## VI. CONCLUSION.

